

Message

From: Dertke, Daniel (ENRD) [Daniel.Dertke@usdoj.gov]
Sent: 12/2/2014 4:37:19 PM
To: Smith, Ryan A. [RSmith@BHFS.com]; Paul Spruhan [pspruhan@nndoj.org]; 'mgodfrey@akingump.com' [MGodfrey@AKINGUMP.com]; 'Flynn, Aaron M.' [flynna@hunton.com]; Don Pongrace [dpongance@AKINGUMP.COM]; Wehrum, William L. [wwehrum@hunton.com]; Ramaley Karilee S [Karilee.Ramaley@srpnet.com]; Fichthorn, Norm [nfichthorn@hunton.com]
CC: Lyons, Ann [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=39ea390c390e41fd84511d6cdc266cee-ALYONS]; Anderson, Lea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b8317edf62f74e67bcf42adbdf7785e9-LANDER03]
Subject: RE: Motion to Consolidate-NGS

I don't think each petitioner (or each intervenor) should have a separate, full length brief. I think consolidating the cases supports the briefing format that I have proposed, which allows for one or two petitioner briefs, depending on whether the Hopi remain in the case. I understand that each intervenor would like their own separate brief, and that the Navajo and Gila River folks can make the same argument in favor of separate briefs as can the Hopi, but I would hope that we can work something out that allows petitioners and intervenors to be able to state their case, without an explosion of briefs.

Aaron set up a call at 1 today, to talk about the schedule and format; perhaps we should hold off on the consolidation motion until we have that call. I am adding Ann and Lea from EPA, both of whom will be on the 1:00 call.

From: Smith, Ryan A. [mailto:RSmith@BHFS.com]
Sent: Tuesday, December 02, 2014 11:17 AM
To: Paul Spruhan; Dertke, Daniel (ENRD); 'mgodfrey@akingump.com'; 'Flynn, Aaron M.'; Don Pongrace; Wehrum, William L.; Ramaley Karilee S; Fichthorn, Norm
Subject: RE: Motion to Consolidate-NGS

Maybe I will just be silent on the briefing schedule and page limits then.

Sent via the Samsung Galaxy Note® 3, an AT&T 4G LTE smartphone

----- Original message -----

From: Paul Spruhan <pspruhan@nndoj.org>
Date: 12/02/2014 8:13 AM (GMT-08:00)
To: "Smith, Ryan A." <RSmith@BHFS.com>, "daniel.dertke@usdoj.gov" <Daniel.Dertke@usdoj.gov>, "mgodfrey@akingump.com" <MGodfrey@AKINGUMP.com>, "Flynn, Aaron M." <flynna@hunton.com>, Don Pongrace <dpongance@AKINGUMP.COM>, "Wehrum, William L." <wwehrum@hunton.com>, Ramaley Karilee S <Karilee.Ramaley@srpnet.com>, "Fichthorn, Norm" <nfichthorn@hunton.com>
Cc:
Subject: RE: Motion to Consolidate-NGS

Seems fine to me. As I recall the first order granting intervention structured the briefing as allowing each party and intervenor their own brief. The second order doesn't contradict that, but simply states the briefing is suspended. If that's the status quo, I don't see why we would agree at this point to anything else.

From: Smith, Ryan A. [mailto:RSmith@BHFS.com]
Sent: Tuesday, December 02, 2014 9:00 AM
To: 'daniel.dertke@usdoj.gov'; 'mgodfrey@akingump.com'; 'Flynn, Aaron M.'; Don Pongrace; Wehrum, William L.;

Ramaley Karilee S; Paul Spruhan; Fichthorn, Norm
Subject: Re: Motion to Consolidate-NGS

I will reach out to the petitioners so I can make a representation to the Court concerning their respective decisions on the motion. Because it is unlikely that the parties at this point will agree on a briefing schedule and length of briefs, the best strategy may simply be to move to consolidate the four petitions and represent to the court that the parties have not yet reached agreement on a proposed briefing schedule, etc.

Thoughts?

Sent from Surface

From: 'daniel.dertke@usdoj.gov'
Sent: Tuesday, December 2, 2014 10:50 AM
To: Ryan Smith, 'mgodfrey@akingump.com', 'Flynn, Aaron M.', Don Pongrace, Wehrum, William L., Ramaley Karilee S, 'pspruhan@nndoj.org', Fichthorn, Norm

When I asked petitioners about this a few weeks ago, they were noncommittal and wanted to work out a briefing format first. My sense is that the Hopi Tribe will not oppose consolidation, so long as they get a separate brief of approximately full length, which is consistent with what I have proposed. NPCA and/or the TNA folks might oppose if they think that consolidation will either result in fewer words for them, or a more drawn out schedule than they would prefer.

From: Smith, Ryan A. [mailto:RSmith@BHFS.com]
Sent: Monday, December 01, 2014 6:10 PM
To: 'Godfrey, Merrill C.'; 'Flynn, Aaron M.'; Pongrace, Don; 'Wehrum, William L.'; 'Ramaley Karilee S'; 'Paul Spruhan'; 'Fichthorn, Norm'; Dertke, Daniel (ENRD)
Subject: RE: Motion to Consolidate-NGS

Great, thanks.

EPA and all the intervenors have agreed to join in the motion.

Dan, do you have a sense whether any of the petitioners will oppose consolidation at this point?

Ryan

From: Godfrey, Merrill C. [mailto:MGodfrey@AKINGUMP.com]
Sent: Monday, December 01, 2014 6:07 PM
To: Smith, Ryan A.; 'Flynn, Aaron M.'; Pongrace, Don; 'Wehrum, William L.'; 'Ramaley Karilee S'; 'Paul Spruhan'; 'Fichthorn, Norm'; daniel.dertke@usdoj.gov
Subject: RE: Motion to Consolidate-NGS

Gila River Indian Community will join.

From: Smith, Ryan A. [mailto:RSmith@BHFS.com]

Sent: Tuesday, November 25, 2014 2:50 PM

To: 'Flynn, Aaron M.'; Pongrace, Don; 'Wehrum, William L.'; 'Ramaley Karilee S'; 'Paul Spruhan'; 'Fichthorn, Norm'; Godfrey, Merrill C.; daniel.dertke@usdoj.gov

Subject: Motion to Consolidate-NGS

All,

Aaron and I spoke this afternoon regarding the procedural posture of the four petitions. In light of the court's confusion concerning the four motions to intervene (as evidenced by its November 17th order) and the fact that the final rule at issue in all four petitions is identical, we thought it would make sense to jointly move to consolidate the petitions.

Therefore, please let me know if you would join in a motion to consolidate, which I intend to prepare shortly. I should have a draft to the group sometime early next week.

Dan, please also let us know whether DOJ/EPA would join in the motion.

Thanks and have a happy Thanksgiving.

Best,

Ryan

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